



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1997

Mr. Otto D. Hewitt, III
Attorney at Law
1600 East Highway 6, Suite 302
Alvin, Texas 77511

OR97-2550

Dear Mr. Hewitt:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID# 110700 and ID# 111322.

The Brazoria County Sheriff's Department (the "department"), which you represent, received two open records requests from the media. The first request asks for

a list of all people approved for Capital Corrections Resources, Inc. employment by the Brazoria County Sheriff's Department. By that, I mean I want a list of CCRI employees who worked at the County Detention Center. Those employees, as I understand it, were approved for CCRI employment by the Sheriff's Department.

The second request asks for the following information: the names (first and last) of all sheriff's department and CCRI employees, including title or job classification, and previous employer. You contend the requested information is excepted from required public disclosure pursuant to sections 552.102, 552.103, 552.108, and 552.111 of the Government Code. We will discuss each of the exceptions you raised in turn.

Section 552.102(a) excepts from public disclosure

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

Section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision No. 315 (1982). The information at issue does not comport with this standard. The requestor is seeking only a list of names of certain public employees. The information at issue pertains solely to the employees' status and qualifications as public servants, and as such cannot be deemed to be outside the realm of public interest. *Cf.* Open Records Decision No. 557 (1990) and authorities cited therein (identities of individuals performing services for government not protected by privacy). *See also* Open Records Decision Nos. 455 (1987) (information revealing job applicants' educational training, names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the types of information at issue here.

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1.

You contend that section 552.103(a) excepts the requested information from required disclosure because the requested information relates to a pending lawsuit against the department, among others. You have submitted to this office for review a copy of the petition in the lawsuit where the plaintiff, a prisoner at the Brazoria County Detention Center, has alleged that certain employees violated his civil rights during a search of the detention center and what you describe as an attempt "to restore order and discipline." You have not explained, nor is it apparent to this office, how the information relates to the pending litigation. We therefore conclude that you have not met your burden in establishing the applicability of section 552.103 in this instance. The department therefore may not withhold the requested information under this exception.

You indicate that the requested information is excepted from public disclosure pursuant to section 552.108(b) of the Government Code. Section 552.108(b), as amended by the Seventy-fifth Legislature, excepts from required public disclosure

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You have not demonstrated or otherwise attempted to explain how this exception, as amended, applies to the information at issue. The department therefore may not withhold the information pursuant to section 552.108.

Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records

Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

Clearly, the information at issue pertains solely to routine personnel matters. Section 552.111 does not protect this type of information.

Because you have raised no applicable exception to disclosure, the department must release the requested information. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/rho

Ref.: ID#s 110700, 111322

Enclosures: Submitted documents

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